

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Raquel Velasquez	Team: Squad #11	CCRB Case #: 201404440	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 05/01/2014 2:15 PM	Location of Incident: § 87(2)(b) and the 40th Precinct stationhouse	Precinct: 40	18 Mo. SOL 11/1/2015	EO SOL 11/1/2015	
Date/Time CV Reported Thu, 05/01/2014 1:15 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 05/07/2014 3:59 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Donald Sehl	02712	951232	040 PCT
2. SGT Stephen Monroe	02330	904604	040 PCT
3. POM Rostislav Kipervaser	08614	950687	040 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Moises Garcia	05782	950471	040 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Donald Sehl	Abuse: At § 87(2)(b) in the Bronx, PO Donald Sehl stopped § 87(2)(b) and individuals.	
B.POM Rostislav Kipervaser	Abuse: At § 87(2)(b) in the Bronx, PO Rostislav Kipervaser stopped § 87(2)(b) and individuals.	
C.SGT Stephen Monroe	Abuse: At § 87(2)(b) in the Bronx, Sgt. Stephen Monroe stopped § 87(2)(b) and individuals.	
D.POM Donald Sehl	Abuse: At § 87(2)(b) in the Bronx, PO Donald Sehl frisked § 87(2)(b)	
E.POM Rostislav Kipervaser	Abuse: At § 87(2)(b) in the Bronx, PO Rostislav Kipervaser frisked an individual.	
F.SGT Stephen Monroe	Abuse: At § 87(2)(b) in the Bronx, Sgt. Stephen Monroe frisked an individual.	
G.POM Donald Sehl	Force: At § 87(2)(b) in the Bronx, PO Donald Sehl used physical force against § 87(2)(b)	
H.POM Rostislav Kipervaser	Force: At § 87(2)(b) in the Bronx, PO Rostislav Kipervaser used physical force against § 87(2)(b)	
I.SGT Stephen Monroe	Force: At § 87(2)(b) in the Bronx, Sgt. Stephen Monroe used physical force against § 87(2)(b)	
J.POM Donald Sehl	Discourtesy: At § 87(2)(b) in the Bronx, PO Donald Sehl spoke discourteously to § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
K.POM Rostislav Kipervaser	Abuse: At the 40th Precinct stationhouse, PO Rostislav Kipervaser did not obtain medical treatment for § 87(2)(b)	

Case Summary

On May 1, 2014, § 87(2)(b) filed this complaint with IAB regarding an incident that she witnessed. On the same day, at approximately 2:15 p.m., PO Donald Sehl, PO Rostislav Kipervaser and Sgt. Stephen Monroe, from the 40th Precinct anti-crime team, stopped § 87(2)(b) and two unidentified individuals at § 87(2)(b) in the Bronx (**Allegations A, B, and C**). PO Sehl frisked § 87(2)(b) (**Allegation D**). PO Kipervaser and Sgt. Monroe allegedly frisked the two unidentified individuals (**Allegations E and F**). PO Sehl, PO Kipervaser and Sgt. Monroe allegedly punched § 87(2)(b) about his body and tripped him, causing him to fall to the ground (**Allegations G, H and I**). PO Sehl allegedly stated, “Get the fuck down.” (**Allegation J**) § 87(2)(b) was arrested for § 87(2)(b). He was transported to the 40th Precinct stationhouse. While in a holding cell, § 87(2)(b) allegedly asked PO Kipervaser for medical treatment. PO Kipervaser allegedly walked away (**Allegation K**). (CCRB complaint encl. B4-B6; C1-C8)

Mediation, Civil and Criminal Histories

This case was not mediation eligible. § 87(2)(b) did not file a Notice of Claim regarding this incident. [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian and Officer CCRB Histories

- This is the first CCRB complaint filed on behalf of § 87(2)(b) (encl. A4).
- PO Donald Sehl has been a member of the service for three years and there are two substantiated CCRB allegations against him. In CCRB case number 201302532, allegations of Abuse of Authority for a stop and a frisk were substantiated. The CCRB recommended command discipline; the NYPD issued instructions (encl. A1).
- Sgt. Stephen Monroe has been a member of the service for 21 years and there are no substantiated CCRB allegations against him (encl. A3).
- PO Rostislav Kipervaser has been a member of the service for three years and there are no substantiated CCRB allegations against him (encl. A2).

Findings and Recommendations

Explanation of Subject Officer Identification

PO Sehl, PO Kipervaser and Sgt. Monroe acknowledged interacting with § 87(2)(b) and the unidentified individuals.

Allegations Not Pleaded

Discourteous action, search of cellphone, property damage and search of person: § 87(2)(b)

§ 87(2)(b) who called 911, alleged that an officer (whose description she did not recall) snatched a cellphone from the hand of an unidentified female who was recording the incident. § 87(2)(b) stated that he noticed a female bystander recording the incident and stated that one of the individuals he was stopped with told him that the cellphone belonged to him and that the video footage of the incident had been deleted. § 87(2)(g)

§ 87(2)(b) stated that he was not searched until after he removed a bag of marijuana from his waistband. Although § 87(2)(b) denied possessing crack cocaine, he was charged with § 87(2)(b)

§ 87(2)(g)

Allegation A- At § 87(2)(b) in the Bronx, PO Donald Sehl stopped § 87(2)(b) and individuals.

Allegation B- At § 87(2)(b) in the Bronx, PO Rostislav Kipervaser stopped § 87(2)(b) and individuals.

Allegation C- At § 87(2)(b) in the Bronx, Sgt. Stephen Monroe stopped § 87(2)(b) and individuals.

Allegation D- At § 87(2)(b) in the Bronx, PO Donald Sehl frisked § 87(2)(b)

Allegation E- At § 87(2)(b) in the Bronx, PO Rostislav Kipervaser frisked an individual.

Allegation F- At § 87(2)(b) in the Bronx, Sgt. Stephen Monroe frisked an individual.

It is undisputed that the officers stopped § 87(2)(b) and unidentified individuals and that PO Sehl frisked § 87(2)(b) § 87(2)(g)

Prior to being stopped, § 87(2)(b) had smoked marijuana at a friend's apartment. About 30 minutes later, he was sitting on a bench with an individual he knows as § 87(2)(b) and one or two other unidentified individuals. § 87(2)(b) smoked a tobacco cigarette while he spoke to § 87(2)(b) PO Sehl, PO Kipervaser and Sgt. Monroe approached them. PO Kipervaser approached and ordered them to stand up; they complied. PO Sehl immediately frisked § 87(2)(b) PO Kipervaser simultaneously frisked Rick, and Sgt. Monroe frisked one of the unidentified individuals. Everyone was then released, except for § 87(2)(b) PO Sehl told § 87(2)(b) that he smelled like something § 87(2)(b) could not recall what) and asked § 87(2)(b) if he had drugs that were stronger than marijuana. § 87(2)(b) admitted to having a bag of marijuana, which he removed from his waistband. § 87(2)(b) was arrested but he was not charged with any marijuana-related offenses § 87(2)(b) (encl. C1-C8).

§ 87(2)(b) the 911 caller observed § 87(2)(b), § 87(2)(f) two officers approach § 87(2)(b) while he was seated on a bench. § 87(2)(b) did not mention other individuals with § 87(2)(b) § 87(2)(b) stated that the officers frisked and searched § 87(2)(b) but she was unable to provide any details regarding those actions (encl. E1). The investigation was unable to identify the individuals who were stopped with § 87(2)(b) (Encl. L11).

PO Sehl, PO Kipervaser and Sgt. Monroe observed § 87(2)(b) and the unidentified individuals near a bench. PO Sehl did not recall how many of the individuals, but at least one was drinking from a container whose description he did not recall. PO Kipervaser observed all of the individuals drinking from white cups. Sgt. Monroe also observed all of the individuals drinking from Styrofoam cups. The officers suspected that they had open containers of alcohol and approached to investigate, and possibly issue summonses for open container violations. PO Sehl and PO Kipervaser smelled alcohol as they approached (encl. F1-F12; G1-G5; H1-H5).

PO Sehl stated that § 87(2)(b) appeared more nervous than the other individuals, like he was about to run away from the officers. § 87(2)(b) immediately reached into his waistband and tucked something inside, but none of the officers saw the item or observed any bulges. PO Sehl asked § 87(2)(b) to stand up and produce identification. While PO Sehl did not recall if § 87(2)(b) stood up, he recalled that § 87(2)(b) once again reached for the left side of his waistband, as if he was grabbing at something. § 87(2)(b)'s nervousness combined with his repeated reach towards his waistband heightened PO Sehl's suspicion that § 87(2)(b) was concealing a weapon. PO Sehl told

§ 87(2)(b) to stop and patted § 87(2)(b) waistband for weapons. A struggle ensued with § 87(2)(b) and they eventually discovered the bulge was a hard plastic container that contained three small Ziploc bags of crack cocaine (encl. F1-F12).

Sgt. Monroe added that there had been shootings in the vicinity around the time of the incident and this factored into his suspicion that § 87(2)(b) was concealing a weapon. PO Kipervaser corroborated that PO Sehl attempted to retrieve the object, but § 87(2)(b) moved away. Sgt. Monroe and PO Kipervaser denied that the unidentified individuals were frisked (G1-G5; H1-H5). PO Sehl did not know if the unidentified individuals were frisked (encl. F1-F12).

PO Sehl's memo book notes that § 87(2)(b) was observed drinking six ounces of Absolut Vodka mixed with tea (encl. F1-F3). § 87(2)(b) was not charged with any local violations and there is no mention that § 87(2)(b) was stopped for an open container (encl. F6-F8). His physical condition is described as apparently normal and "good" in the arrest report and precinct command log, respectively (encl. F6-F8; J17). When presented with the arrest report, PO Sehl stated that he likely forgot about the alcohol in the wake of the struggle and recovery of crack cocaine.

An officer may stop a person when he reasonably suspects that such person is committing, has committed, or is about to commit a crime, N.Y.S. Criminal Procedure Law §140.50(1) (encl. 1a-1b). An officer may frisk an individual when he reasonable suspects that he is in danger of physical injury by virtue of the detainee being armed. People v. DeBour, (encl. 1c-1m). Absent the observation of a bulge or any telltale sign of a weapon, actions such as adjusting a waistband during an initial police observation, a quick pace, walking with an arm stiffly against one's body during a second encounter with the police, the high-crime nature of the area and the civilian's inconsistent and evasive responses during police questions, are innocuous and may not generate a founded suspicion of criminality, People v. Powell, 246 A.D.2d 366 (N.Y. App. Div. 1998) (encl. 1n-1q) According to the New York City Administrative Code, no person shall drink or consume an alcoholic beverage, or possess, with intent to consume, an open container containing an alcoholic beverage in any public place. N.Y.C. Admin. Code § 10-125 (encl. 1r-1t); People v. Basono, 122 A.D.3d 553 (App. Div. 1st Dep't. 2014) (encl. 1u).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation G- At § 87(2)(b) in the Bronx, PO Donald Sehl used physical force against § 87(2)(b)

Allegation H- At § 87(2)(b) in the Bronx, PO Rostislav Kipervaser used physical force against § 87(2)(b)

Allegation I- At § 87(2)(b) in the Bronx, Sgt. Stephen Monroe used physical force against § 87(2)(b)

Allegation J- At § 87(2)(b) in the Bronx, PO Donald Sehl spoke discourteously to § 87(2)(b)

Allegation K- At the 40th Precinct stationhouse, PO Rostislav Kipervaser did not obtain medical treatment for § 87(2)(b)

§ 87(2)(b) stated that PO Sehl and PO Kipervaser escorted him 15 to 20 feet from the bench to the side of the building where he felt a blow to the left side of his face. Because PO Kipervaser was on his left side, § 87(2)(b) assumed that he struck him. All three officers then struck him about his body. PO Sehl allegedly stated, “Get the fuck down!” The officers brought him to the ground and continued to strike him for two to three minutes before handcuffing him. § 87(2)(b) tried to cover his face with his forearms but denied making any other movements or resisting arrest. While in the holding cells, § 87(2)(b) asked PO Kipervaser to see a doctor for his injuries; PO Kipervaser did not reply and walked away. § 87(2)(b) stated that he suffered scrapes to his knees (encl. C6) and elbows and a bruise to his right cheek, but he did not seek medical treatment (encl. C1-C7). § 87(2)(b) arrest photograph depicts pink discoloration on his right cheek that is inconclusive (encl. J16). There were two prisoners possibly in the holding cell with § 87(2)(b) § 87(2)(b) was unavailable to the investigation and § 87(2)(b) did not recall this incident (encl. E2; L11).

In her phone statement to IAB, § 87(2)(b) stated that § 87(2)(b) and the officers got into a fight. She stated that the officers punched and kicked § 87(2)(b) and that § 87(2)(b) fought back, knocking at least one of them over. In her phone statement to the CCRB, § 87(2)(b) stated that the officers pushed § 87(2)(b) back and forth and to the ground, but she had a difficult time seeing details due to her distance. She stated that § 87(2)(b) was punched, but could not recall which officer hit § 87(2)(b) how many times he was hit, or where on his body the blows landed (encl. E1; L13). § 87(2)(b) saw § 87(2)(b) the following day but did not observe any injuries.

According to the officers, § 87(2)(b) pulled away after PO Sehl attempted unsuccessfully to search him. PO Sehl stated that PO Kipervaser immediately wrapped his arms around § 87(2)(b) waist and held him in a bear hug to prevent him from fleeing. § 87(2)(b) was going to be handcuffed for everyone’s safety and not because he was considered under arrest. § 87(2)(b) however, resisted by pulling away and attempting to flee, flailing and twisting his body, and shrugging his elbows and shoulders. The officers attempted to pull § 87(2)(b) arms behind his back and gave him verbal commands, but § 87(2)(b) did not comply. While struggling, the officers and § 87(2)(b) lost their balance and fell to the ground. § 87(2)(b) continued to resist. Officers responded to the scene and helped handcuff § 87(2)(b) after struggling for approximately two to five minutes. During the struggle § 87(2)(b) removed a plastic container containing crack cocaine from his waistband and tossed it to the ground.

PO Sehl did not recall if § 87(2)(b) had any injuries. PO Kipervaser and Sgt. Monroe denied seeing any injuries. PO Sehl did not recall punching or seeing any officer tripping or punching § 87(2)(b) denied saying to § 87(2)(b) “Get the fuck down,” and did not recall § 87(2)(b) asking for medical attention. PO Kipervaser and Sgt. Monroe denied punching or seeing any officer

tripping or punching § 87(2)(b) denied hearing PO Sehl make the alleged discourteous statement, and denied hearing § 87(2)(b) ask for medical attention (encl. F1-F12; G1-G5; H1-H5). Approximately two hours after the incident, Sgt. Monroe reported to IAB that § 87(2)(b) was refusing medical attention (encl. B3).

Only the minimum amount of force necessary to overcome resistance will be used to effect an arrest, Patrol Guide Procedure 203-11, (encl.1v-1w)

§ 87(2)(g)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Pod: 11

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date